Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A. O. No. 1327 of 2001 (Old No. 99 of 1999)

National Insurance Company Ltd.,
Branch Chamba, District-Tehri
Garhwal through its A.O.,
Divisional Office, Allahabad

..... Defendant/Appellant.

Versus.

(1) Sri Darshan Lal S/o Sri Etbaru,
(2) Smt. Bagha Devi W/o Darshan Lal
Both are R/o Khetrapati, Patti
Raunad Ramoli, District-Tehri Garhwal.

..... Claimant/Respondents.

(3) Sri Ramesh Dobhal S/o Sri P.D.Dobhal
(4) Sri P.D. Dobhal S/o Sri Sriram,
Both Residents of Mandir Mohalla
P.O.Chamba, District Tehri Garhwal.

..... Defendant/Respondents

Sri Lalit Belwal, learned counsel for the appellant,
Sri Rakesh Thapliyal, learned counsel for the claimants.

Dated: 25th Aug., 2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the defendant/National Insurance Company against the judgment and order dated 28.11.1998 passed by Motor Accident Claims Tribunal, Tehri Garhwal in Motor Accident Claim Petition No. 10 of 1998, whereby the claim petition of the petitioners has been decreed for grant of Rs. 3,38,600/- as compensation against the Opp. Parties.

2- Brief facts giving rise to this appeal are that Bijendra Lal deceased was doing service at Chandigarh. After spending his holidays, he was going on foot to bus

stand Rishikesh-Dehradun for going to Chandigarh in the night of 14.12.1997. He was going on foot with precaution and on reaching near Shipra Hotel on Dehrladun road, at about 9.15 p.m. Truck No. UP 08-0516 driven by Ramesh Dobhal-Opp.party No. 1 came there in a very high speed from the side of Dehradun and the said truck hit Bijendra Lal. Bijendra Lal dragged by the said truck to some distance and due to injuries he died at the spot. The age of the deceased was about 24 years at the time of the accident. The deceased was earning Rs. 2200/- per month by doing job of driver in Chandigarh. The claim petition was filed by the dependents of deceased for the grant of Rs. 7,55,000/- as compensation against the Opp.parties.

3- The Opp.parties contested the claim petition by filing their written statement before the Tribunal. The Opp.parties 1& 2 denied the accident occurred by the truck. However ownership of the vehicle and its insurance with the National Insurance Company Ltd. has been admitted by them. Opp. Party No.3-the Insurance Company has also denied also the allegations of the claim petition. It was also alleged that the driver of the said truck was also not having a valid driving licence on the date of the accident. The Tribunal, on the basis of the pleadings of the parties, framed the necessary issues and decided them in favour of the claimants.

4- The learned counsel for the appellant-Insurance Company pressed the appeal only on the ground that the parents were not dependent upon the deceased, therefore the compensation awarded was excessive. We have gone through the material on record and perused the impugned judgment. The learned Tribunal while deciding issue Nos. 2 & 3 together gave its finding that the petitioners are father and mother of the deceased aged about 59 & 52 years

respectively. It has not come in the evidence of the opp.parties that the petitioners were not dependent upon the deceased. According to the High School mark-sheet of the deceased which was filed by the petitioners on record, his date of birth was 10.7.1978 . Petitioners have also filed by the income certificate of the deceased, paper No.33-C/1. The said income certificate shows that the deceased Bijendra Lal was working with Brig.G.S.Khosal at Chandigarh as his personal driver and got gross salary of Rs. 2200/- per month. We find that on the basis of the evidence, the learned Tribunal has rightly held the income of the deceased and calculated the loss of dependency on the aforesaid amount. On the basis of the findings given by the learned Tribunal we held that the grounds to file an appeal are not available to the appellant under Sec. 173 of the Motor Vehicles Act, 1988.

5- Further, the law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. The Apex Court in case of ***National Insurance Company Ltd. Chandigarh versus Nicolletta Rohtagi and others reported in (2002) 7 Supreme Court Cases, Page 456*** has held that, *"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".* However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

6. Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant-Insurance Company has no force.

7. The appeal has no merit and is dismissed. The order impugned in this appeal is affirmed. There shall be no order as to costs. The amount deposited by the appellant in this appeal shall be remitted to the Motor Accident Claims Tribunal concerned within a period of three months from today.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh